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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,135	04/21/2004	Jeffrey Dunmire	JSCOTT.0002P	5469
32856	7590	04/14/2006	EXAMINER	
WEIDE & MILLER, LTD. 7251 W. LAKE MEAD BLVD. SUITE 530 LAS VEGAS, NV 89128			LAVINDER, JACK W	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/829,135	Applicant(s) DUNMIRE, JEFFREY	
	Examiner Jack W. Lavinder	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 11 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 11 state that the face of the magnetic element be at least 50% of the total area comprising the rear of the link. This contradicts the size of the face of the magnetic element defined in the independent claim 10 from which claim 11 depends. Independent claim 10 states that the size of the face of the magnetic element is 50% of a total area comprising the rear of the link and the face of the magnetic element. This limitation sets forth that the magnetic element must be larger than 50% of the total area of the rear face of the link plus the surface area of the magnetic element. Claim 11 sets forth that the magnetic element has a surface area which is less than the range set forth in claim 10. Which range is correct?

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 have been rejected under 35 U.S.C. 102(e) as being anticipated by Fuhrman, 6591462.

Regarding claim 1, Fuhrman discloses an ornamental clasp (12, figure 7) made from titanium (col. 4, lines 48-50) having a magnet (24) that comprises at least 50% of the total area of the rear of the main body (12) and the face of the magnet (24). The face of the magnet (24) is generally coplanar with at least a portion of the rear of the body (figures 6 and 7).

Regarding claim 2, Fuhrman discloses the clasp being used with a necklace, bracelet, anklet or belly chain. The end links of the bracelet are elements 10 and 12. Therefore, these elements are considered to be links in the bracelet, i.e., the link that connects the ends of the bracelet to one another.

Regarding claim 3, Fuhrman discloses a bracelet with a plurality of links, not necessarily the link discussed in claim 2. The claim does not require that all the links be like the link discussed in claim 2. If applicant intended that all the links be the same, the claim would have stated that the bracelet comprises a plurality of **said** links connected to one another. Instead, the claim states that the bracelet comprises a plurality of links connected to one another.

Regarding claim 4, Fuhrman discloses a circular shaped magnetic element, which is considered to be generally oval in shape.

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4. Claims 5-9 have been rejected under 35 U.S.C. 103(a) as being unpatentable over www.fdp-magnetics.com webpage copyrighted 2000-2002 in view of Fontana, 4625508.

Regarding claims 5-6 and 8-9, the webpage discloses a silver/gold link bracelet with magnets embedded behind each link wherein the front face of the magnets are generally coplanar with the rear face of the link. The webpage fails to disclose the bracelet being made from titanium.

Fontana disclose a bracelet that can be made from titanium (col. 1, lines 35-45). Therefore, it would have been obvious to make the bracelet describe and shown in the webpage from titanium in order to produce a lighter and more wear resistant bracelet.

Regarding claim 7, the webpage discloses a silver/gold link bracelet with magnets embedded behind each link wherein the front face of the magnets are generally coplanar with the rear face of the link. The webpage fails to disclose the bracelet being made from titanium and the relative size of the face of the magnet compared to the face of the whole link, i.e., the claim calls for the face of the magnet to be at least 50% of a total area comprising the rear of the main body and the face of the magnet.

Fontana disclose a bracelet that can be made from titanium (col. 1, lines 35-45). Therefore, it would have been obvious to make the bracelet describe and shown in the webpage from titanium in order to produce a lighter and more wear resistant bracelet.

With regard to the relative size of the magnet to the surface area of the link, the webpages disclose various size relationships between the link's surface area and the

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magnet's surface area. In order to increase the magnetic effect of the bracelet one skilled in the art would increase the size of the magnet, i.e. exposed surface area, and invariably increase the ratio between the surface area of the magnet and the surface area of the link. It would have been obvious to a person having ordinary skill to use a larger magnetic surface area to provide an increase in the magnetic field delivered to the wearer. This increase would improve the health benefits derived from wearing the bracelet.

5. Claims 10-14 have been rejected under 35 U.S.C. 103(a) as being unpatentable over www.fdp-magnetics.com webpage copyrighted 2000-2002.

The webpage discloses a silver/gold link bracelet with magnets embedded behind each link wherein the front face of the magnets are generally coplanar with the rear face of the link. The webpage fails to disclose the relative size of the face of the magnet compared to the face of the whole link, i.e., the claim calls for the face of the magnet to be at least 50% of a total area comprising the rear of the main body and the face of the magnet.

With regard to the relative size of the magnet to the surface area of the link, the webpages disclose various size relationships between the link's surface area and the magnet's surface area. In order to increase the magnetic effect of the bracelet one skilled in the art would increase the size of the magnet, i.e. exposed surface area, and invariably increase the ratio between the surface area of the magnet and the surface area of the link. It would have been obvious to a person having ordinary skill to use a larger magnetic surface area to provide an increase in the magnetic field delivered to

the wearer. This increase would improve the health benefits derived from wearing the bracelet.

6. Claims 15-18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over www.fdp-magnetics.com webpage.

Regarding claims 15 and 16, the webpage discloses a silver/gold link bracelet with magnets embedded behind each link wherein the front face of the magnets are generally coplanar with the rear face of the link. FDP discloses a circular magnet, but fails to disclose an oval magnet. The shape of the magnet is considered to be an obvious design choice. It would have been obvious to a person having ordinary skill in the art to change the shape of FDP's magnet to have an oval shape in order to change the aesthetics of the bracelet and to increase and optimize the surface area of contact between the magnet and the wearer's skin to improve the alleged health benefits to the wearer.

Regarding claims 17 and 18, the webpage fails to disclose the relative size of the face of the magnet compared to the face of the whole link, i.e., the claim calls for the face of the magnet to be at least 50% of a total area comprising the rear of the main body and the face of the magnet.

With regard to the relative size of the magnet to the surface area of the link, the webpages disclose various size relationships between the link's surface area and the magnet's surface area. In order to increase the magnetic effect of the bracelet one skilled in the art would increase the size of the magnet, i.e. exposed surface area, and invariably increase the ratio between the surface area of the magnet and the surface

area of the link. It would have been obvious to a person having ordinary skill to use a larger magnetic surface area to provide an increase in the magnetic field delivered to the wearer. This increase would improve the health benefits derived from wearing the bracelet.

7. The declaration under 37 CFR 1.132 filed 2/6/06 is insufficient to overcome the rejection of claims 1-14 based upon FDP and Fontana as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. For example, in section 9 of the declaration, the applicant states that “constructing the links of the magnetic jewelry entirely from a precious metal solved several problems.” The claims do not require that the link be constructed “entirely from” a precious metal. Claim 1 states that the body be constructed from titanium, which is open ended language allowing the body to also include other materials. Claim 10 states that the links are “constructed from substantially from a precious or semi-precious material”. This claim doesn’t even require that the link be made from a precious material. Claim 15 doesn’t even require or discuss the material used to make the link. Therefore, the discussion of the type of material used in solving several of the problems with the prior art magnetic bracelets is not persuasive since the claims are not directed to a link made entirely from a precious metal. Furthermore, even though the FDP reference discloses plating the link with precious material, it still would solve the problems of the jewelry being too heavy, i.e., a gold plated link is much

lighter than a solid gold link, and the discoloring of the skin of the wearer, i.e., a plated gold link will discolor the skin as much as a solid gold link will discolor the skin.

The declaration fails to provide any evidence with regard to how the solid precious link solves the problem of having to use a larger magnet.

The declaration states that the FDP reference discloses plating, which I agree with. The declaration then states that "in some cases, the back-side of the jewelry is not plated, allowing the base material to contact the skin and discolor and irritate the skin." This I don't agree with. Clearly, as seen from the reference, the entire surfaces of the links are plated with the precious metals.

The declaration states that the examiner's approach is to increase the total mass of the magnet. The examiner suggested increasing the surface area of the magnet to increase the amount of area directly affected by the magnetic flux distributed to the wearer's skin without having to increase the size of the link, i.e., optimizing the already existing state of the art.

In section 16 of the declaration, the declaration states solving a manufacturing problem, i.e., reducing the cost of producing an oval recess. This does not pertain to the claimed article. This is an in expensive solution to a manufacturing problem. However, the problem of creating an oval recess was solved many times over and with many different techniques. Therefore, the problem of producing an oval recess in a metal link was solved prior to applicant's solution, albeit a cheaper lower cost solution. The applicant might consider filing a method application in order to cover this aspect of the invention. The current invention is directed to an article of jewelry and not to the

method of making the jewelry. Therefore, this evidence is not persuasive in overcoming the rejections.

Response to Arguments

8. Applicant's arguments filed 2/6/06 have been fully considered but they are not persuasive. The applicant argues, with regard to the FDP Mangetics reference, that the reference doesn't suggest the use of solid precious metal links. This argument is moot because the claims do not require that the links be made from solid precious metal. The claims state that the body is constructed from titanium. There is no mention in the claim that the links be formed from a *solid* precious metal.

The applicant also argues that Fontana teaches away from using titanium because of machining difficulties. In the background of the invention section of Fontana, the reference teaches that it is old and well known to make bracelets from titanium. The reference mentions that it is difficult to weld and solder with this material. Although it is difficult to work with, the material has the benefits of being lightweight and also has a remarkable degree of resistance to wear. Therefore, Fontana does not teach away from using titanium as a metal for making bracelets. Fontana merely teaches that titanium is a difficult material to machine.

The applicant argues that it would not be obvious to increase the size of the magnet. The applicant reasons that an increase in size of the magnet would also warrant an increase in the size of the link to accommodate the thicker magnet. The increase in the size of the magnet would not be in the depth direction, but in the length or diameter direction in order to maximize the exposed surface of the magnet to the

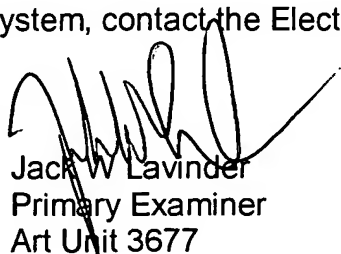
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exposed rear surface of the link. By maximizing this surface area, more magnetic flux can be distributed to the wearer with the same size link, which is considered to be beneficial to the health of the wearer. Also, by maximizing this surface area, the links of the bracelet will remain the same size. Therefore the weight and size of the bracelet will not become burdensome to the wearer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W. Lavinder
Primary Examiner
Art Unit 3677

4/9/06